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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA**

**FOURTH APPELLATE DISTRICT**

**DIVISION TWO**

THE PEOPLE,

Plaintiff and Respondent,

v.

REGGIE EUGENE KING,

Defendant and Appellant.

E054438

(Super.Ct.No. RIF150333)

OPINION

APPEAL from the Superior Court of Riverside County. Larrie R. Brainard, Judge.  
(Retired judge of the San Diego Super. Ct., assigned by the Chief Justice pursuant to art.  
VI, § 6, of the Cal. Const.) Affirmed.

Richard Jay Moller, under appointment by the Court of Appeal, for Defendant and  
Appellant.

Kamala D. Harris, Attorney General, Dane R. Gillette, Chief Assistant Attorney  
General, Julie L. Garland, Assistant Attorney General, Vincent P. LaPietra, Deputy  
Attorney General, for Plaintiff and Respondent.

A jury convicted defendant and appellant Reggie Eugene King of robbery (count 1—Pen. Code § 211),<sup>1</sup> assault with force likely to produce great bodily injury (count 2—§ 245, subd. (a)(1)), and active participation in a criminal street gang (count 3—§ 186.22, subd. (a)). The jury additionally found true gang enhancement allegations attached to the count 1 and 2 offenses.<sup>2</sup> (§ 186.22, subd. (b).) The court sentenced defendant to an aggregate term of imprisonment of 13 years.

On appeal, defendant contends the court erred in permitting the People's gang expert to testify as to his opinion that the instant crimes were gang related. Defendant additionally maintains insufficient evidence supported the true findings on both gang enhancement allegations. Defendant furthermore argues the court erred in prohibiting cross-examination of the People's expert gang witness on another officer's ostensible previous testimony that he believed the robbery to be a crime of opportunity. We affirm the judgment.

### **FACTUAL AND PROCEDURAL HISTORY**

On April 4, 2009, the victim parked adjacent to the gas pumps at a gas station in Moreno Valley; he exited his car and started pumping gas. Five young Black men in the car behind him started flirting with a girl who pulled up at the island next to the victim;

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<sup>1</sup> All further statutory references are to the Penal Code unless otherwise indicated.

<sup>2</sup> After a first trial, the initial jury hung on all counts. The court declared a mistrial. The People subsequently filed a first amended complaint and proceeded to a second trial.

the men soon became vulgar, yelling sexually suggestive and threatening remarks toward her, which appeared to make her apprehensive.

The victim walked up to the men's car and told them, "Guys that's enough." One of them responded "what are you going to do about it." One of them said, "You don't come to our neighborhood, and . . . say things to us like that." One of the men seated in the backseat of the car spat on the victim. The victim spat back.

The man in the rear passenger seat got out, approached the victim, and said "Where are you going to go now?" The victim attempted to get back in his car, but the men poured out of the car and punched him from behind until he passed out. The victim sustained injuries to his mouth, jaw, cheek, nose, shoulder, knee, and legs. One of the victim's teeth was knocked out and another three were loosened.

The paramedics arrived and took the victim to the emergency room. The victim remained in the hospital for two to three hours; he was subsequently compelled to seek medical treatment for his injuries on dozens of occasions. At the hospital, the victim noticed his wallet, which he normally kept in his back pocket, was missing. One of his credit cards was subsequently used.

Naisha Harris, the assistant manager of the gas station, was inside the store when one of her customer's exclaimed, "[O]h, my God. They're . . . fighting this guy. They're beating up this guy." She saw four African-American men between the ages of 18 and 24 kicking and punching the victim for between two and three minutes. She saw one of the men reach down toward the victim's pocket and grab his wallet. The assailants got back in their car and left. Harris called 911.

Harris later retrieved the video surveillance footage for the police and provided them with a copy of the recording. The People played the recording during the testimony of several witnesses.

Deputy Sheriff Anthony Johnson, who was assigned to the Moreno Valley Special Enforcement Team Gang Unit, was called in to view the recording to see if he could identify any of the assailants. Deputy Johnson was able to identify three: defendant, defendant's younger brother Charles King, and Trevares Taylor. A fourth suspect was later identified as Dennis Darden. Defendant was the driver of the vehicle.

William Guimont, an investigator for the Riverside County Sheriff's Department, detained defendant on April 14 or 15, 2009. After defendant waived his right not to speak with him, Investigator Guimont asked defendant if he knew why he had been detained. Defendant replied it was because of what had occurred at the gas station. Defendant said he had been involved in a fight. Defendant told Investigator Guimont that Taylor had been speaking with a woman when the victim approached them and began cursing at them. The victim then spat on defendant's brother; the occupants of the vehicle all got out of the car and fought with the victim.

Defendant told Investigator Guimont he took the wallet from the victim's pants. He later looked through it, but finding nothing of value, threw it out the window of the car. Defendant told Investigator Guimont he was an affiliate of the Edgemont Dorner Blocc (EDB) gang; someone who just hangs out with members of the gang. Defendant wrote the victim an apology letter in which he apologized "for what happened that day at the gas station." Defendant wrote, "I hope you're okay. I just acted off anger, and I

wasn't thinking at all. And I have been feeling bad about the situation. I pray you can forgive me for my foolishness."

Deputy Sheriff Mario Moreno testified as the People's gang witness expert. He testified EDB is "one of the most predominant black criminal street gangs in Moreno Valley." Darden pled guilty to charges of robbery, assault, and active participation in a criminal street gang deriving from the facts in the instant case; he also admitted the instant crimes were committed for the benefit of, at the direction of, or in association with other members of the EDB. Deputy Moreno opined defendant was a member of EDB and that he committed the instant crimes in association with other gang members "in a violent manner to inflict fear in the community[.] It's my opinion this was a gang-related crime."

Defendant admitted being an affiliate of EDB. He testified the victim came up to them and started cursing at them, telling them not to talk to a woman that way. The victim then spat on defendant's brother. The others exited the vehicle and began punching and kicking the victim. Defendant did not hit the victim; he merely picked up defendant's wallet off the ground and later threw it out the car window.

## **DISCUSSION**

### **A. ADMISSION OF DEPUTY MORENO'S OPINION TESTIMONY**

After testifying regarding his familiarity with EDB as a criminal street gang, and his opinion defendant was a member of it, the People asked Deputy Moreno whether he had reached an opinion "as to whether or not this particular crime was committed . . . to benefit, at the association of or at the direction of [EDB]?" Defense counsel objected on

the grounds the question called for a legal conclusion. The court overruled the objection and instructed the jury, “you’re going to make the decision regarding the gang allegations in this case as we define them for you, but we do allow expert witnesses to actually give an opinion based on the facts. So of course you don’t have to accept that opinion if you feel it’s not appropriate.” Deputy Moreno opined, “It’s my opinion this was a gang-related crime.”

Defendant contends the court erred in permitting Deputy Moreno to testify regarding the subjective intent of defendant in committing the crimes. In other words, defendant maintains Deputy Moreno’s testimony had no foundational basis and did nothing more than inform the jury how he believed it should resolve the issues before it. We disagree. Regardless, even if error, we hold it harmless.

“California law permits a person with “special knowledge, skill, experience, training, or education” in a particular field to qualify as an expert witness (Evid. Code, § 720) and to give testimony in the form of an opinion (*id.*, [Evid. Code,] § 801). Under Evidence Code section 801, expert opinion testimony is admissible only if the subject matter of the testimony is “sufficiently beyond common experience that the opinion of an expert would assist the trier of fact.” (*Id.*, subd. (a).) The subject matter of the culture and habits of criminal street gangs . . . meets this criterion.’ [Citation.]” (*People v. Vang* (2011) 52 Cal.4th 1038, 1044 (*Vang*).)

“When expert opinion is offered, much must be left to the trial court’s discretion.’ [Citation.] The trial court has broad discretion in deciding whether to admit or exclude expert testimony [citation], and its decision as to whether expert testimony meets the

standard for admissibility is subject to review for abuse of discretion. [Citations.]” (*People v. McDowell* (2012) 54 Cal.4th 395, 426.) “‘Generally, an expert may render opinion testimony on the basis of facts given “in a hypothetical question that asks the expert to assume their truth.” [Citation.]’ [Citation.]” (*Vang, supra*, 52 Cal.4th at p. 1045.) “Use of hypothetical questions is subject to an important requirement. ‘Such a hypothetical question must be rooted in facts shown by the evidence. . . .’ [Citations.]” (*Ibid.*)

Here, there is no question the People failed to pose their question to Deputy Moreno in the form of a hypothetical. The normal manner of proceeding in such cases is to ask the expert witness a question based upon a hypothetical situation grounded in the facts of the case being tried. There is no doubt the better manner of proceeding here would have been to pose the question in the form of a hypothetical that embraced the particular facts of the case, but did not directly refer to defendant. Nevertheless, the admission of such expert evidence is not necessarily error: “[N]o statute prohibits an expert from expressing an opinion regarding whether a crime was gang related. Indeed, [it] is settled that an expert may express such an opinion. To the extent the expert may not express an opinion regarding the actual defendants, that is because the jury can determine what the defendants did as well as an expert, not because of a prohibition against the expert opining on the entire subject. Using hypothetical questions is just as appropriate on this point as on other matters about which an expert may testify.” (*Vang, supra*, 52 Cal.4th at p. 1052.)

Here, there is no doubt Deputy Moreno’s testimony was rooted in the facts shown by the evidence. Moreover, at least one court has found the admission of an expert witnesses’ opinion that the crimes of the particular defendants in question were committed for the benefit of the respective defendants’ gangs, without the use of a hypothetical, was within the trial court’s discretion. (*People v. Valdez* (1997) 58 Cal.App.4th 494, 509.) Likewise, the court in *Vang*, albeit in dicta, expressed support for that holding: “It appears that in some circumstances, expert testimony regarding the specific defendants might be proper. [Citations.]” (*Vang, supra*, 52 Cal.4th at p. 1048, fn. 4.) Nonetheless, assuming error, we conclude on this record that it is not reasonably probable an outcome more favorable to defendant would have resulted in the absence of Deputy Moreno’s testimony. (*People v. Clark* (2011) 52 Cal.4th 856, 940-941 [error in admission of prosecution’s expert witness testimony subject to *Watson* standard of harmless error]; *People v. Watson* (1956) 46 Cal.2d 818, 836.)

#### B. SUFFICIENCY OF THE EVIDENCE

Defendant “concedes there was substantial evidence that he and his friends were gang members, and sufficient evidence to support the substantive gang charge under Penal Code section 186.22[, subdivision] (a).” Nonetheless, defendant contends without Deputy Moreno’s impermissible testimony that the offenses were gang related, insufficient evidence supports the true findings on the gang enhancement allegations. Even assuming Deputy Moreno’s testimony was improperly admitted, we hold there was no reasonable probability of an outcome more favorable to defendant. Thus, substantial evidence supported the jury’s true findings on the enhancements.



““In considering a challenge to the sufficiency of the evidence to support an enhancement, we review the entire record in the light most favorable to the judgment to determine whether it contains substantial evidence—that is, evidence that is reasonable, credible, and of solid value—from which a reasonable trier of fact could find the defendant guilty beyond a reasonable doubt. [Citation.] We presume every fact in support of the judgment the trier of fact could have reasonably deduced from the evidence. [Citation.] If the circumstances reasonably justify the trier of fact’s findings, reversal of the judgment is not warranted simply because the circumstances might also reasonably be reconciled with a contrary finding. [Citation.] ‘A reviewing court neither reweighs evidence nor reevaluates a witness’s credibility.’ [Citation.]’ [Citation.] The same test applies to the review of special circumstantial findings. [Citation.]” (*People v. Livingston* (2012) 53 Cal.4th 1145, 1170.)

“Section 186.22, subdivision (b)(1), enhances the sentence for ‘any person who is convicted of a felony committed for the benefit of, at the direction of, or in association with any criminal street gang, with the specific intent to promote, further, or assist in any criminal conduct by gang members . . . .’ [Citation.]” (*People v. Livingston, supra*, 53 Cal.4th at p. 1170.)

Here, even without Detective Moreno’s testimony, it was not reasonably probable that defendant would have obtained a more favorable outcome. As conceded by defendant both on appeal and below, defendant was an affiliate of EDB. Detective Moreno testified that in his opinion, defendant was a member of EDB. In addition to the testimony of two percipient witnesses of the crime, the People introduced into evidence a

video recording of the entire attack. That evidence reflected defendant's participation in a beating of the victim by at least four members of EDB during which the victim's wallet was stolen.

From his experience on the Moreno Valley Special Enforcement Team Gang Unit, Deputy Johnson was able to identify defendant, Charles King, and Taylor from the video. Darden was also identified from the recording. Darden had been convicted of robbery, assault, and active participation in a criminal street gang as a result of his participation in the instant offenses. As part of Darden's plea, he admitted the crimes were committed for the benefit of, at the direction of, or in association with other members of the gang for the specific intent of benefitting the gang's members.

Taylor had been convicted of a robbery committed shortly after the current incident in which both Darden and Charles King were involved. As part of his plea, Taylor admitted the crime was committed for the benefit of, at the direction of, or in association with other members of the gang for the specific intent of benefitting the gang's members. Thus, overwhelming evidence supported, at minimum, a determination defendant committed the instant crime in association with fellow members of EDB.

In *People v. Morales* (2003) 112 Cal.App.4th, 1176 (Fourth Dist., Div. Two), this court held the foundational fact permitting a true finding on a gang enhancement was the defendant's commission of the offense *in association with a fellow gang member*. (*Id.* at p. 1197; see also *People v. Albillar* (2010) 51 Cal.4th 47, 61-62; *People v. Ochoa* (2009) 179 Cal.App.4th 650, 661, fn. 7 [Fourth Dist., Div. Two].) Defendant cites *People v. Ramon* (2009) 175 Cal.App.4th 843, 851, for the proposition that the mere fact a gang

member commits a crime with another member of his gang is insufficient to support a true finding on a gang enhancement allegation. We stand by our holding in *Morales*: “the jury could reasonably infer the requisite association from the very fact that defendant committed the charged crimes in association with fellow gang members.” (*Morales*, at p. 1198.) Moreover, we disagreed with and distinguished the holding in *Ramon* in our decision in *Ochoa*.

In his reply brief, defendant maintains that even if sufficient evidence supported a determination defendant acted in association with EDB, insufficient evidence was adduced that defendant’s specific intent was to promote, further, or assist in criminal conduct by EDB members. We disagree. The People adduced evidence defendant joined the assault on the victim by his fellow gang members. Defendant used the opportunity to purloin the victim’s wallet. Defendant’s participation in the melee assisted his fellow gang members in their assault of the victim. As we noted in *Morales*, the “defendant’s intentional acts, when combined with his knowledge that those acts would assist crimes by fellow gang members, afforded sufficient evidence of the requisite specific intent.” (*People v. Morales, supra*, 112 Cal.App.4th at pp. 1198-1199.) Similarly, defendant’s theft of the victim’s wallet “was, at a minimum, as a gang member himself, [done] with the specific intent to promote, further, or assist criminal conduct by gang *member(s)* (himself and perhaps his passenger[s]).” (*People v. Ochoa, supra*, 179 Cal.App.4th at p. 661, fn. 6.) There was no reasonable probability that absent Deputy Moreno’s testimony defendant’s crimes were gang related, defendant would have obtained a more favorable

result. Therefore, substantial evidence likewise supported the jury's true findings on the gang enhancements.

C. LIMITATION ON CROSS-EXAMINATION

On cross-examination of Deputy Moreno, defense counsel asked whether Deputy Moreno was aware Deputy Johnson had previously testified he believed defendant's theft of the wallet was a crime of opportunity. The People objected on the grounds of relevance, and that the question assumed facts not in evidence. The court sustained the objection. Defense counsel's offer of proof was that the question went to Deputy Moreno's expert opinion. The court sustained the objection noting the question went to someone else's opinion, not Deputy Moreno's.

After a bench conference, the court instructed the jury: "Ladies and gentlemen, what intent was involved in terms of the robbery, there is a requirement of intending to steal. Whether it's a crime of opportunity or intended in advance and all of those kind of things are not for this witness to say. That's a jury determination. That's a factual determination. He is here to give an opinion strictly on the issues regarding the, quote, gang allegations, so forth."

After Deputy Moreno completed his testimony, defense counsel asked the court to reconsider its ruling on the People's objection. Defense counsel noted Deputy Johnson had testified at the preliminary hearing that defendant took the wallet as an afterthought. She also argued she should be entitled to cross-examine Deputy Moreno on his testimony at the previous trial on the subject of Deputy Johnson's opinion the robbery was a crime of opportunity, because it negated the specific intent that the crime was gang related.

The People argued that at no time had Deputy Moreno been asked if he relied on the opinion of Deputy Johnson; neither had Deputy Moreno been asked to opine regarding defendant's specific intent in taking the wallet. The court reiterated its former ruling sustaining the objection.

Defendant contends the court abused its discretion in limiting defendant's cross-examination of Deputy Moreno. We disagree.

"It is settled that the trial court is given wide discretion in controlling the scope of relevant cross-examination. [Citation.]" (*People v. Farnam* (2002) 28 Cal.4th 107, 187.) "Although the right of confrontation includes the right to cross-examine adverse witnesses on matters reflecting on their credibility, 'trial judges retain wide latitude insofar as the Confrontation Clause is concerned to impose reasonable limits on such cross-examination.' [Citation.] In particular, notwithstanding the confrontation clause, a trial court may restrict cross-examination of an adverse witness on the grounds stated in Evidence Code section 352. [Citation.] A trial court's limitation on cross-examination pertaining to the credibility of a witness does not violate the confrontation clause unless a reasonable jury might have received a significantly different impression of the witness's credibility had the excluded cross-examination been permitted. [Citations.]" (*People v. Quartermain* (1997) 16 Cal.4th 600, 623-624.)

First, Deputy Johnson never testified at the preliminary hearing that defendant's theft of the wallet was a crime of opportunity. Rather, Deputy Johnson testified that pursuant to a hypothetical in which multiple gang members physically assaulted an individual and "at the end of that assault, a robbery took place," "that would be

something that just presents itself as a crime of opportunity . . . .” Here, there was evidence defendant exited the car after the others had initiated the assault on the victim. This would support a reasonable inference defendant moved with the specific, premeditated intent to steal the victim’s wallet. Moreover, it is not altogether clear from this record that the assault ceased the moment defendant took the wallet. Second, the lack of premeditation or deliberation would not negate a finding that the robbery was gang related. After all, defendant, a gang member, committed the robbery while he and his fellow gang members were beating the victim. Thus, even if the theft was a crime of opportunity this would not nullify the requisite specific intent to support a true finding.

Third, Deputy Moreno testified at the previous trial it would surprise him to learn Deputy Johnson had testified at the preliminary hearing that the instant robbery was a crime of opportunity. Of course, as noted above, Deputy Johnson did not so testify. Nevertheless, Deputy Moreno also testified at the previous trial that even if the theft was a crime of opportunity, it would not negate the specific intent requisite for a finding that the crime was gang related. Thus, it is difficult to see how defendant’s line of cross-examination would have helped him. Finally, as the People noted below, no evidence established that Deputy Moreno based any of his opinion testimony on anything learned from Deputy Johnson, and Deputy Moreno never testified as to defendant’s specific intent in committing the theft. Thus, the court acted within its discretion in limiting defendant’s cross-examination of Deputy Moreno on this one line of questioning.

**DISPOSITION**

The judgment is affirmed.

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MILLER  
J.

We concur:

RAMIREZ  
P. J.

HOLLENHORST  
J.